

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

KEVIN L. ALLEN,

Petitioner,

vs.

SCOTT FRAKES, Director NDCS;

Respondent.

8:19CV212

MEMORANDUM
AND ORDER

This matter is before the court on Petitioner's motion for permission to amend his 28 U.S.C. § 2254 habeas petition pursuant to Fed. R. Civ. P. 15 "to include a valid claim of actual innocence." ([Filing No. 9.](#)) Respondent has notified the court that he has no objection to Petitioner's motion. ([Filing No. 10.](#)) Accordingly,

IT IS ORDERED that:

1. Petitioner's motion for permission to amend ([filing no. 9](#)) is granted. Petitioner shall have until **January 8, 2020**, to file and serve an amended habeas petition **that clearly presents all of his claims for relief**. To be clear, Petitioner must set forth his claims from his original Petition ([filing no. 1](#)) and his proposed actual innocence claim in his amended petition. **Petitioner is warned that the amended petition will supersede, not supplement, his original Petition.** Petitioner is encouraged to utilize the enclosed form petition for a writ of habeas corpus under 28 U.S.C. § 2254. Failure to file an amended petition within the time set by the court will result in dismissal of this matter without further notice to Petitioner.

2. The deadlines set forth in the court's previously-filed progression order ([filing no. 6](#)) are suspended until further order of the court. **Following the**

filing of the amended petition, the court will enter a new order progressing this matter to disposition.

3. The clerk of the court is directed to send to Petitioner the Form AO 241 (“Petition for Relief From a Conviction or Sentence By a Person in State Custody”).

4. The clerk of the court is directed to set a pro se case management deadline in this matter with the following text: **January 8, 2020**: check for amended petition.

Dated this 9th day of December, 2019.

BY THE COURT:

s/ Richard G. Kopf
Senior United States District Judge